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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ARLYN M. DE LA CRUZ** **1633 S. Stockton Street** **Stockton, CA 95206** **Vocational Nurse License No. VN 188159** Respondent.	Case No. VN-2007-1082 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about May 3, 1999, the Board issued Vocational Nurse License Number VN 188159 to Arlyn M. De La Cruz ("Respondent"). Respondent's vocational nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing Practice Act.

4. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual nursing functions . . .

5. California Code of Regulations, title 16, section ("Regulation") 2519 states:

As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 'gross negligence' means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed vocational nurse, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.

6. Regulation 2520 states:

As set forth in Section 2878 of the Code, incompetence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 'incompetence' means the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by responsible licensed vocational nurses.

7. Regulation 2518.6 states, in pertinent part:

(a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by actions which include but are not limited to the following:

. . . .

(2) Documenting patient/client care in accordance with standards of the profession . . .

. . . .

(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

(1) Maintaining current knowledge and skills for safe and competent practice;

. . . .

(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. At all times relevant herein, Respondent was employed as a licensed vocational nurse at Whispering Hope Care Center located in Stockton, California.

10. On or about October 28, 2007, at approximately 1910 hours, Respondent inserted a Foley catheter for a male resident (hereinafter "patient")[1] as ordered by the patient's physician. At approximately 1910 hours, Respondent checked the patient and observed that there was no urine output. Respondent decided to observe the patient's urine output for an additional 2 to 3 hours by increasing the patient's fluid intake to 600 cc during her shift while initiating an intake and output protocol.

11. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (a)(1), on the grounds of unprofessional conduct, in that Respondent was guilty of gross negligence in her care of the patient within the meaning of Regulation 2519, as follows:

a. Respondent failed to assess the patient for hydration of the oral mucosa or skin turgor.

b. Respondent failed to document in the Licensed Nurses Progress Notes the insertion of the catheter, the lack of urine flow, the initiation of Intake and Output protocol with a form to reflect the increased intake, and the output assessments.

c. Respondent failed to notify the patient's physician and/or the registered nurse on duty of the patient's lack of urine output.

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[1] The patient's diagnoses included septic shock, altered consciousness, hypertension, congestive heart failure, chronic obstructive pulmonary disease, and diabetes mellitus, insulin dependent.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

12. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 9 and 10 above.

13. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about October 28, 2007, Respondent was guilty of incompetence in her care of the patient within the meaning of Regulation 2520, as set forth in paragraph 11 above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 9 and 10 above.

15. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (a), in that on or about October 28, 2007, Respondent committed acts constituting unprofessional conduct, as set forth in paragraph 11 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number 188159, issued to Arlyn M. De La Cruz;

2. Ordering Arlyn M. De La Cruz to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: May 17, 2011.

TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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